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April 16, 1998

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**BY HAND DELIVERY**

Ms. Magalie R. Salas, Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Re: In the Matter of  
Amendment of Section 73.202(b) Table of  
Allotments FM Broadcast Stations  
Tylertown, Mississippi  
File No.: MM Docket No. 97-45; RM-8961

Dear Ms. Salas:

Transmitted herewith on behalf of TRL Broadcasting Company are an original and four (4) copies of its "Reply to Opposition to Motion to Strike" as directed to the Chief, Allocations Branch.

Should any additional information be required, please contact this office.

Very truly yours,

  
Henry E. Crawford  
Counsel for  
TRL Broadcasting Company

cc: The Chief, Allocations Branch

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BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**  
WASHINGTON, D.C.

In the Matter of

Amendment of Section 73.202(b)  
Table of Allotments  
FM Broadcast Stations  
Tylertown, Mississippi

MM Docket No. 97-45

RM-8961

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: The Chief, Allocations Branch

**REPLY TO OPPOSITION TO MOTION TO STRIKE**

TRL Broadcasting Company ("TRL Broadcasting"), by counsel, hereby submits its *Reply to Opposition to Motion to Strike* in response to the Opposition to Motion to Strike ("Opposition") filed by Guaranty Broadcasting Corporation ("Guaranty") in the above-captioned matter on April 22, 1998. In support thereof TRL Broadcasting states as follows:

**I. THE PETITION CANNOT BE ACCEPTED**

1. The Opposition does not address the arguments raised in TRL Broadcasting's Motion to Strike ("Motion"). Guaranty offers no valid defense or explanation for its failure to comply with Sections 1.44(e) and 1.229(b) of the Commission's rules. TRL Broadcasting's concern with Guaranty's failure to follow the rules is by no means a "procedural tirade."<sup>1</sup> By submitting all of its purported information to the Commission for the first time on reconsideration, Guaranty has

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<sup>1</sup> Opposition, p. 1.

robbed the Commission and TRL Broadcasting of any opportunity to evaluate or respond to the materials during the notice and comment rulemaking.<sup>2</sup>

2. Guaranty offers no explanation at all why these materials could not have been proffered during the rulemaking, as is required by Section 1.429(b) of the Commissions rules. Having lost at the notice and comment stage, Guaranty is trying to make its “case” now, on reconsideration. That has long been held to be an unacceptable practice. Whidbey Broadcasting Service, Inc. (KJTT(AM)), 4 FCC Rcd 8726, 8727 (1989); Arizona City, Arizona, 4 FCC Rcd 5711 (1989); Scottsboro, Alabama; Trenton, Georgia; Signal Mountain, Tennessee, 6 FCC Rcd 6111 (1991); Vacaville and Middletown, California, 6 FCC Rcd 143 (1991). Consequently, the Petition cannot be considered by the Commission.

## **II. GUARANTY’S CONDUCT**

3. Underlying Guaranty’s Opposition is the implicit belief that unlike every other Commission licensee, Guaranty on its own may decide whether to comply with the Commission’s rules in any given situation. Unfortunately, that attitude appears to have resulted in a disturbing pattern of conduct in its submissions before the Commission.

4. For example, it is now clear that Guaranty or its counsel erroneously combined the stay request with its petition for reconsideration. However, rather than admitting its error, Guaranty claims that in view of the application filing freeze:

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<sup>2</sup> This problem was compounded by Guaranty’s failure to serve counsel with a copy of the *Petition for Reconsideration and Motion for Stay* (“Petition”). See, TRL Broadcasting’s, April 7, 1998, Motion to File Response.

Guaranty did not think it necessary to burden the Commission with a separately filed pleading requesting a stay in this proceeding.

Opposition, pp. 1-2, n. 1. This implies that Guaranty knew of the requirements of Section 1.44(e) beforehand and chose not to comply with them because of the “burden” on the Commission. However, if that were true, Guaranty most assuredly would have advised the Commission of its intent, perhaps in a footnote to the Petition.<sup>3</sup> Instead, it said nothing until the matter was brought to the attention of the Commission by TRL Broadcasting.

5. TRL Broadcasting submits that no licensee has the right to determine for itself whether it needs to comply with the Commission’s rules, even if it believes that compliance with the rules will “burden” the Commission. In the present case, not only do we have a failure to abide by Section 1.44(e) of the Commission’s rules, we are also presented with a disturbing pattern of evasion and dubious representations surrounding that failure. To call this an “inconsequential procedural point”<sup>4</sup> only demonstrates the contempt that Guaranty has for the orderly working of the Commission’s processes.

6. Of greater concern is the quality of the “evidence” that Guaranty proffers on reconsideration. Virtually none of the information submitted in the Petition was presented during the time for comments. Yet, Guaranty offers no explanation at all for why it could not have presented that information at the appropriate time. In fact, the only party that submitted a sworn statement in

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<sup>3</sup> Guaranty has not been shy in its use of footnotes.

<sup>4</sup> Opposition, p. 1, n. 1.

Guaranty's comments, has submitted a new declaration that actually impeaches the testimony given in comments.

7. In his declaration given only days after the purported March 7, 1997 meeting, Randy W. Kendrick ("Kendrick") specifically denied having had the discussions which he now, nearly a year later, claims took place. He also suddenly claims the presence of an individual who he could not even recall last year in his first declaration. Both declarations cannot be true. Yet Guaranty has refused to offer any explanation of the disparity between Kendrick's two declarations. This does indeed strike a "dissonant chord"<sup>5</sup> since it shows Guaranty's inability to deal in a forthright manner before the Commission.

8. The volumes of new material put forward by Guaranty on reconsideration are by no means an "elaborat[ion]"<sup>6</sup> or an "additional citation or case reference."<sup>7</sup> That argument is as disingenuous as Guaranty's argument about not wishing to "burden" the Commission by following the rules. However, what is most disturbing about this entire affair is that when combined with a substantively frivolous Petition that does not even address the merits of the Commission's underlying rationale, it appears that Guaranty has embarked on a pattern of conduct that suggests a serious abuse of the Commission's processes.

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<sup>5</sup> Opposition, p. 2.

<sup>6</sup> Opposition, p. 2.

<sup>7</sup> Opposition, p. 3.

### **III. CONCLUSION**

9. With auctions looming in the future, the Allocations Branch must demand strict compliance with the Commission's substantive and procedural rules. The Guaranty Petition is a throwback to the days of comparative hearings in which parties sought their own gain through the use of intimidation and innuendo. If documents like the Petition are allowed to go forward, it will amount to an open invitation for parties in rulemaking proceedings to raise bogus allegations and, when they lose, simply present additional bogus materials on reconsideration. In the present case, Guaranty has gone further and impeached its previously proffered testimony. Nothing can be gained by giving this sort of presentation any consideration at all. In the parlance of computer programming, garbage in - garbage out.


**WHEREFORE**, in accordance with the above, TRL Broadcasting Company reiterates its request that Guaranty Broadcasting Corporation's Petition for Reconsideration and Motion for Stay be stricken in its entirety.

April 30, 1998

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Respectfully Submitted,

TRL Broadcasting Company

By:   
Henry E. Crawford

Its Attorney

CERTIFICATE OF SERVICE

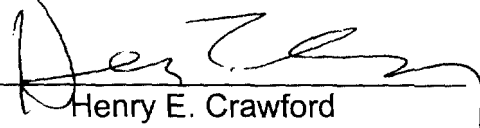
I, Henry E. Crawford, do hereby certify that copies of the foregoing Reply to Opposition to Motion to Strike have been served by United States mail, postage prepaid this 30th day of April, 1998 upon the following:

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\*Hand Delivered

  
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